

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE AFFIDAVIT
FOR CORPORATE OFFICERS AND MANAGERS OF MANAGER MANAGED LIMITED LIABILITY COMPANIES
APPLICATION FOR TWO (2) YEAR EXEMPTION
FEE \$125



State of _____)

County of _____)

: SS

I, _____, being first duly sworn, state:

(Applicant's name)

1. I am making these statements and representations in order to apply for an independent contractor exemption certificate with the Montana Department of Labor and Industry (Department). I understand the Department is relying on the truth and accuracy of these statements when approving my independent contractor exemption certificate.

2. The business structure of the business I hold a position in is (circle one): **Corporation** **Manager Managed LLC**

My name is: _____
(Last) (First) (Middle)

My mailing address is: _____
(Street or PO Box) (City) (State) (Zip)

My business name is: _____
(Name of business)

The business' physical address is: _____
(Street or directions to physical location) (City) (State) (Zip)

My telephone number is: (____) _____ - _____ My social security number is: _____ - _____ - _____

You are required to notify the Department if any of the above information changes after the certificate is granted.

3. I hold a position with a corporation or manager-managed limited liability company registered with the Montana Secretary of State. The occupation(s), trade or profession for which I am applying is/are: _____

I am providing documentation to the Department that demonstrates registration of the corporation or LLC with the Montana Secretary of State and which shows the business is an active, established business related to the occupation(s), trade or profession listed above. **(See instructions on back)**

4. I am an (circle one) officer of a corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

Circle one: **president** **vice president** **secretary** **treasurer** **manager**

AND;

I either (please indicate which category you meet):

_____ own 20% or more of the number of shares of stock in the corporation or own 20% or more of the limited liability company; or

_____ own less than 20% of the number of shares of stock in the corporation or limited liability company, but when my ownership is aggregated with the shares owned by a person or persons listed in the third category, the total is 20% or more of the number of shares in the corporation or limited liability company; or

_____ I am the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets one of the requirements above.

5. When acting as an independent contractor I must be free from control or direction over the performance of my services and the details of my work, both under contract and in fact. The hiring agent only offers direction and exercises control in matters essential to specifying the end result.

6. I understand and agree that as a qualifying corporate officer or manager of a manager managed LLC, I am exempt from the requirements of the Workers' Compensation Act of Montana as provided by § 39-71-401(2)(r)(iii) or (iv), MCA, but that I may voluntarily elect workers' compensation coverage for myself. I also understand and agree that if my independent contractor exemption certificate is granted, **I waive all my rights to voluntarily obtain coverage** for work performed under the certificate. I further understand I am precluded from obtaining benefits under the Act from the hiring agent related to my work performance as an independent contractor. I understand and agree that I am responsible for the taxes related to my work as an independent contractor. I understand that as an independent contractor I will not be afforded protections under the Wage Payment Act, the Human Rights Act, or the Workers' Compensation Act. However, I also understand that as a corporate officer for a corporation or a manager of a manager-managed LLC, I am not exempt from Montana's Unemployment Insurance laws, and must report my wages to the Unemployment Insurance Division.

7. I also understand that if granted, the independent contractor exemption certificate will remain in effect for **TWO years** for the occupations listed on the certificate, unless I notify the Department in writing that I want to have the exemption cancelled, or the Department revokes or suspends the independent contractor exemption certificate. I understand that if I want to maintain my independent contractor exemption, I will have to re-qualify every two years.

By signing this affidavit and the associated waiver form, I understand and agree that if my independent contractor exemption certificate is granted I **WAIVE ALL MY RIGHTS TO OBTAIN COVERAGE AND BENEFITS THAT I MAY HAVE UNDER MONTANA'S WORKERS' COMPENSATION ACT**. I further declare that I am 18 years old or older, and that all of the information I have supplied in and with this Affidavit is true.

By: _____
Applicant Signature

SUBSCRIBED AND SWORN before me this ____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public

Residing at _____,

(Notarial seal)

My commission expires _____

****Notaries Please Note****

Please put applicant under oath
before executing this affidavit.
This is a sworn statement.

IC Affidavit May 2009

Notice to Applicants: Montana law provides for a civil penalty of up to \$1,000 for each violation of the following: A person may not perform work as an independent contractor without obtaining either workers' compensation insurance or an independent contractor exemption certificate; perform work as an independent contractor when the Department has revoked or denied the independent contractor's exemption certificate; transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person; alter or falsify an independent contractor exemption certificate; and/or misrepresent the person's status as an independent contractor. The Department has the authority to investigate your working relationships as an independent contractor. If through investigation, the Department determines you are acting as an employee, this exemption may be suspended or revoked.

Notice to Employers: Montana law prohibits employers from avoiding their responsibility to provide workers' compensation insurance for employees. An employer may not require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status or exert control to a degree that destroys the independent contractor relationship. In addition to any other penalty or sanction, a person or employer who violates a provision of the law is subject to a fine to be assessed by the Department of up to \$1,000 for each violation.

Notice to Hiring Agents: You can be found to be an employer if you have the **right to control or exercise control** over the worker. A person who violates a provision of the law is subject to a fine to be assessed by the Department of up to \$1,000 for each violation.

INSTRUCTIONS

1. Complete this form only if you are a sole proprietor, a working member of a partnership, limited liability partnership, or member-managed limited liability company and do not want workers' compensation on yourself. A partnership agreement must be provided if marking partnership business structure. Independent contractor exemption certificates are issued to an individual.

Each person requesting an exemption must complete his or her own form.

2. Read the entire affidavit and waiver before signing. NOTE: The waiver is a legal document that when signed waives statutory workers' compensation benefits.

3. If you understand all of the statements on both forms and believe you qualify as an independent contractor, complete the affidavit and the waiver in the manner identified below. Both the affidavit and waiver must be completed entirely or your application may be denied.

DO NOT USE WHITEOUT: If you need to make any corrections, cross out the error, make the correction in ink, and initial.

4. In paragraph 2 of the affidavit, provide the following information, written in blue or black ink:

- My business structure is (mark the appropriate blank with a check or X)
- My name is (include your full individual name)
- My mailing address is (include the number, street, city, state and zip code)
- My business name is (this must be your business name or individual name)
- My business' physical address (include the number, street, city, state and zip code or directions)
- My telephone number is
- My social security number is

5. In paragraph 3 of the affidavit, you must list all trades, occupations, or professions for which you are claiming an independent contractor exemption certificate.

6. If you agree to waive your rights as detailed in the waiver, sign the bottom of the affidavit and waiver and have your signature notarized. In addition to confirming your identity, the notary must require you to verbally swear or affirm to the truth of the information supplied in and with your affidavit.

7. Pay special attention to the civil penalty for misrepresentations made concerning a person's status as an independent contractor.

8. Make checks payable to the Montana Department of Labor & Industry in the amount of \$125. Mail the completed affidavit, waiver, attached photocopies of the 15 points of documentation, and \$125 fee to:

**Independent Contractor Central Unit
P.O. Box 8011
Helena, MT 59604-8011**

Enclosed is a list of suggested documentation considered by the Montana Department of Labor and Industry to demonstrate an independent contractor exemption certificate applicant is engaged in each occupation listed on their application. An applicant must score 15 points for each different occupation listed. The Department has the discretion to assess the reliability of the documentation in order to award points for the items submitted up to the total points for each category.

If you have any questions about completing the affidavit or the waiver, or determining if you are an independent contractor, please call the Independent Contractor Central Unit in Helena at (406) 444-9029.

You may visit our website at www.mtcontractor.com

State of Montana Department of Labor and Industry
Independent Contractor Exemption Certificate Application
for Corporate Officers and Manager-Managed Limited Liability Companies

WAIVER of Workers' Compensation Benefits

Instructions: Sign this waiver only if you understand and agree to all of its provisions.

Name: _____ Social Security Number: _____
(Last) (First) (Middle)

I, _____, am executing this waiver in order to apply for an independent contractor exemption certificate with the Montana Department of Labor and Industry (Department).

Please **initial** all the following statements if you understand and agree:

_____ I understand and agree that as a qualifying corporate officer or qualifying manager of a manager managed liability
(Initial) company (LLC) who directly owns or, when aggregated with qualifying relatives, owns 20% or more of the shares of a corporation or LLC, I am exempt from the requirement to obtain workers' compensation coverage on myself under the Montana Workers' Compensation Act of Montana, Title 39, Chapter 71, MCA (Act). I also understand that I can voluntarily choose to obtain workers' compensation coverage on myself under the Act and would then be entitled to all the benefits under the Act. **However, by applying for an independent contractor exemption certificate, I agree to waive all my rights to obtain the coverage benefits for which I may be eligible under the Act, for any work performed under the certificate.** I understand and agree that if I am injured or develop an occupational disease while working for a hiring agent, I am precluded from obtaining any benefits under the Act for any and all damages arising out of any injury or occupational disease related to my work performance under an independent contractor exemption certificate. I understand and agree that if I die from an injury or occupational disease related to my work performance under an independent contractor exemption certificate, this waiver is effective against any of my beneficiaries as designated under the Act. I understand this waiver is not necessary for workers' compensation purposes if I elect to obtain workers' compensation insurance for myself as provided by the Act.

_____ I understand and agree that if my independent contractor exemption certificate is granted, I will be conclusively
(Initial) presumed in court to have waived all benefits under the Act for work performed under the certificate.

_____ I am engaged in an independently established trade(s), occupation(s), or profession(s) (occupation(s) related to the
(Initial) qualifying corporation or LLC that I hold a position with and I have provided accurate and truthful documentation to the Department to verify the existence of this occupation(s) in my affidavit application.

_____ When acting as an independent contractor, I agree to maintain my status as an independent contractor by being free
(Initial) from control or direction over the performance of my services and the details of my work, both under contract and in fact. I agree hiring agents will only be permitted to offer direction and exercise control in matters essential to specifying the end result. I understand that while performing work under my independent contractor exemption certificate that I am waiving potential benefits under the Act unless I have a written or oral agreement to work as an employee for that hiring agent.

_____ I understand and agree that I am responsible for all taxes related to my work as an independent contractor, including
(Initial) unemployment insurance taxes.

_____ I understand the Department has the authority to investigate my working relationships as an independent contractor
(Initial) and may suspend or revoke my independent contractor exemption certificate if appropriate.

_____ I am of sound mind, I am 18 years of age or older, I have read and understand this waiver, and I am voluntarily and
(Initial) knowingly executing this waiver free from duress, coercion, or misrepresentation from any person.

By signing this waiver, I understand and agree that I WAIVE ALL STATUTORY RIGHTS AND BENEFITS THAT I MAY BE ELIGIBLE FOR UNDER THE ACT, if I chose to obtain coverage on myself.

By: _____
(Applicant signature)

Dated: _____

State of _____)
County of _____) : SS

SUBSCRIBED before me this ____ day of _____, 20____.

(Signature of Notary Public)

(Printed Name of Notary Public)

(Notarial seal)

Residing at _____,

My commission expires _____

State of Montana
 Department of Labor & Industry
 Brian Schweitzer, Governor



The following is a list of suggested documentation considered by the Montana Department of Labor and Industry to demonstrate an independent contractor exemption certificate applicant is engaged in each occupation listed on their application. An applicant must score 15 points for each different occupation listed. The Department has the discretion to assess the reliability of the documentation in order to award points for the items submitted up to the total points for each category. Possible point values are bracketed below.

6 (or more) POINT CATEGORY	Maximum Point Value
Workers' Compensation, Unemployment Insurance and Revenue accounts for employees (all three)	10
Memo of Understanding, contract evidencing Independent Contractor status or Emergency Equipment Rental Agreement <ul style="list-style-type: none"> o payment based on a completed project basis o an ending date of the contract o liability for failure to complete the project o identifies who provides the materials and supplies o a defined body of work, complete project, or end result o signatures by all parties 	6
General commercial liability insurance or bonding	6
List of tools and equipment with approximate value (must be signed and dated)	6
Business tax forms or records (IRS Schedules C, E, F or K – must be within the past two years)	6
Form 1099s (two different hiring agents and compensation amounts differing from IRS Schedules C, E, F or K)	6
Articles of incorporation, organization or annual report (which reflect ownership)	6
Trucking company lease agreement	6
3 POINT CATEGORY	
Partnership agreement (signed by all parties and must be provided if marking partnership business structure) <ul style="list-style-type: none"> o intent to form the partnership o contribution by all partners o a proprietary interest and right of control by the working partner o the sharing of profit/loss o signatures by all parties 	3
Professional license or education certificate	3
City/county business license or permit	3
Registration of business name and structure with Montana Secretary of State	3
Business location documentation (lease or rental agreement or IRS form 8829)	3
Business bank account	3
Professional membership or affiliation	3
Advertising (internet website, newspaper, phone book or magazine)	3
Motor carrier number	3
Two or more completed bids, estimates, proposals or billing invoices	3
1.5 POINT CATEGORY	
Pre-printed forms, business card or brochure	1.5
Invoices billed to business name	1.5
Advertising using sign on vehicle, yard, bulletin board or flyer	1.5
Orders receipt for printed hats, shirts or other apparel, pens or pencils	1.5
Documented proof of federal employer identification number (FEIN, TEIN or TIN)	1.5
Business credit card or purchasing account	1.5
Business telephone or utility bill	1.5
Vehicle registration in business name	1.5
International fuel tax account number (IFTA)	1.5
Dunn & Bradstreet number	1.5